Douglas Aircraft Company, Component of McDonnell Douglas Corporation *and* Charles Rosas. Case 21-CA-18865

March 31, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On July 17, 1981, Administrative Law Judge James S. Jenson issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief, and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

The relevant facts, as more fully stated by the Administrative Law Judge, indicate that Respondent, by a manager, placed a new time restriction on employee use of vending machines in certain buildings. Employees were upset with the new limitation. Charles Rosas, an employee affected by the new rule, talked with other employees, including a union steward, about the matter and told them he would attempt "to help." Rosas wrote an open letter to the manager who issued the changed rule. During his nonwork hours on March 26, 1980, Rosas stood outside the gate of Respondent's facility and attempted to pass out this literature to fellow employees. Respondent refused to allow Rosas to distribute the literature. The Administrative Law Judge found that, by refusing to permit employee Rosas to distribute this literature to employees during nonwork time and in nonwork areas of Respondent's facility, Respondent violated Section 8(a)(1) of the Act. We fully agree with the Administrative Law Judge's conclusion.

In defense of its actions, Respondent asserts, *inter alia*, that it lacked knowledge of the concerted nature of Rosas' activity, and therefore could not have violated the Act. Respondent claims that, contrary to the findings of the Administrative Law Judge, Rosas' comments to the guards at the gate that his letter pertained to several hundred employees cannot be used to prove knowledge because there is no evidence that these guards are agents or supervisors of Respondent. Respondent also argues that Rosas' letter could not be construed to have put Respondent on notice of his concerted protected activity. Thus, Respondent contends the complaint should be dismissed.

We reject Respondent's assertion. Respondent was well aware that Rosas wanted to pass out his literature to other employees. Respondent admits as much. Thus, Respondent concedes that its admitted supervisor, Olson, denied Rosas' request to distribute the literature to his fellow employees. Moreover, Olson, according to his own testimony, read the literature. And a reading of Rosas' open letter reveals displeasure and protest over a manager's institution of new rules which affected, and was the concern of, Respondent's employees. In seeking to distribute such literature, it is clear that Rosas, after discussing the matter with other employees and a union steward, was attempting, as he put it, "to get something done." That is, Rosas was ensuring that Respondent and employees were aware of the

[1] Respondent excepts to the Administrative Law Judge's determination that Respondent violated Sec. 8(a)(1) of the Act by maintaining and enforcing unlawful no-distribution rules. Respondent asserts it was not given proper notice that the validity of its no-distribution rules was at issue. It also claims that it was not afforded the opportunity to present evidence on how the rules were interpreted by employees or how the rules were actually enforced. Respondent further argues that it never relied on the rules in refusing to permit Charging Party Charles Rosas to distribute his open letter and that the evidence on the rules entered at the hearing was merely background information and only incidental to the complaint allegations. Thus, Respondent contends that the Administrative Law Judge's finding violated Respondent's due-process rights and the Administrative Procedure Act, 5 U.S.C. § 551, *et seq.*

We believe that the Administrative Law Judge properly considered the lawfulness of Respondent's rules. The complaint alleges that on or about March 26, 1980, "and continuing to date," Respondent has refused to permit employees to distribute protected matter to other employees during nonwork times and in nonwork areas of Respondent's facility, and thereby has violated the Act. At the hearing, Respondent introduced into evidence its Exh. 6. This exhibit, entitled "Section 13—Distribution of Literature," was a new section of the contract between Respondent and UAW Local 148. It was dated October 15, 1980, and was apparently approved by the parties on October 23, 1980. When Respondent moved to place the exhibit into evidence, the Administrative Law Judge questioned Respondent's counsel: "Well this is sort of after the fact, isn't it?" Respondent's counsel replied: "Yes, Your Honor. *The Complaint, though, also alleges continuing violations.*" (Emphasis supplied.) This passage indicates that Respondent was aware of the complaint allegations, and that such allegations encompassed Respondent's distribution rules. Earlier in the hearing, Respondent questioned Rosas about his testimony on a January 30, 1980, memorandum, from its police services captain, regarding distribution of union literature. The memorandum stated that Respondent had changed its policy on distribution of union literature and now permitted such distribution on company property or at gates without the prior approval of the labor relations department. Again, Respondent cannot claim surprise that its distribution rules were evaluated by the Administrative Law Judge since it was Respondent that put them into evidence and brought them into consideration. The complaint clearly put Respondent on notice that the way it permitted distribution at its plant was at issue. It is equally clear that Respondent's rules on the subject were related to the issues involved in the particular incident of March 26, 1980, and were therefore properly examined by the Administrative Law Judge.

[2] The Administrative Law Judge inadvertently failed to include a cease-and-desist paragraph concerning the employees' exercise of their Sec. 7 rights. We shall correct the Order and notice accordingly.

nature and extent of the dissatisfaction over the manager's action. The matter discussed in the open letter—a change in the time for employee use of the vending machines—was a matter of concern to fellow employees. Rosas testified that it caused employees to be "upset" and "mad" because it changed a previous practice at the plant. Activity similar to the activity engaged in by Rosas here has repeatedly been held by the Board to be both protected and concerted.[3]

In sum, Respondent knew Rosas wanted to distribute the material described above to employees. It prevented him from doing so. It therefore both knew of Rosas' concerted activity—his attempt to distribute literature pertinent to matters encompassed within Section 7 of the Act—and of the protected nature of his activity. On this basis, and for the other cogent reasons articulated by the Administrative Law Judge in his Decision, we conclude Respondent violated Section 8(a)(1) of the Act by refusing to permit employees to distribute protected matter to the employees during nonwork time and in nonwork areas.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Douglas Aircraft Company, Component of McDonnell Douglas Corporation, Long Beach, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(c):

"(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

[3] See, e.g., *Dreis & Krump Manufacturing, Inc.*, 221 NLRB 309 (1975), enfd. 544 F.2d 320 (7th Cir. 1976); *Ford Motor Company*, 221 NLRB 663 (1975); *Hoerner Waldorf Corporation*, 227 NLRB 612 (1976); *Yellow Cab, Inc.*, 210 NLRB 568 (1974); *Eastex, Inc.* v. *N.L.R.B.*, 437 U.S. 556 (1978).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL NOT maintain or enforce a rule or contract provision which prohibits employees from distributing literature concerning matters relating to the exercise of their Section 7 rights on nonworking time in nonworking areas.

WE WILL NOT prohibit employees from distributing literature on nonworking time in nonworking hours concerning matters relating to the exercise of their Section 7 rights.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

DOUGLAS AIRCRAFT COMPANY,
COMPONENT OF MCDONNELL DOUGLAS CORPORATION

DECISION

STATEMENT OF THE CASE

JAMES S. JENSON, Administrative Law Judge: This case was heard in Los Angeles, California, on December 2, 1980.[1] The complaint was issued on May 22, pursuant to a charge filed on March 28, and alleges that on or about, and since, March 26 Respondent has refused to permit employees to distribute protected matter to other employees during nonwork times and in nonwork areas of Respondent's facility. Respondent contends (1) that Rosas was not engaged in concerted activity; (2) Respondent had no knowledge of the concerted nature of Rosas' activity; (3) that by attempting to bypass his union representatives and the collective-bargaining agreement Rosas' actions were not protected under the National Labor Relations Act, as amended, herein called the Act; and (4) his open letter to management was libelous/scurrilous and his attempt to distribute it was disloyal to Respondent. All parties were afforded full op-

[1] All dates herein are in 1980 unless otherwise stated

portunity to appear, to introduce evidence, and to examine and cross-examine witnesses. Briefs were filed by the General Counsel and Respondent and have been carefully considered.

Upon the entire record in the case, including the demeanor of the witnesses, and having considered the post-hearing briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

It is admitted and found that Respondent manufactures jet airliners in Long Beach, California, that it annually sells and ships products valued in excess of $50,000 directly to customers located outside the State of California, and that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent employs approximately 18,000 employees at its Long Beach, California, facility and has dealings with more than nine labor organizations, including UAW Local 148. Charles Rosas is employed by Respondent as a drop hammer operator in building 6, is a member of Local 148, but is not nor has he ever held a position in the Local. On January 21, L. J. Schiavoni, Respondent's fabrication manager, issued the following memorandum to fabrication supervisors:

> Effective immediately, the use of all vending machines in Buildings 3, 4, 5, 6, and 6A is restricted to use only during lunch and break periods.
>
> Corrective action by floor supervision is anticipated to assure compliance of this policy.

While the record is vague as to the pre-memorandum practice, it appears the employees had been permitted to exercise some discretion regarding use of the vending machines. Rosas testified that the employees were "very upset" with the fact "they had 10 minutes to get coffee, did not have enough time to drink the coffee in 10 minutes or to purchase from the vending machines." He testified that he told other employees "that I would try to use [sic] something in order to help the situation if I could." He testified that he had also talked to one of the union stewards about the memorandum, and had been informed that the bargaining committee had been involved in the matter but that nothing had been done. Rosas claims he told the concerned employees and the union steward of his plans to draft a letter concerning the matter in hopes of remedying the problem. Accordingly, Rosas drafted the following letter:

> Mr. Schiavoni:
>
> In the past, you have put out questionable memorandums directed to personnel in Buildings 3, 4, 5, 6 and 6A. One of your memorandums ordered the working forces in the buildings mentioned to stop using vending machines unless lunch or a break period was at hand. Although the working force must abide by your directive, we find that twenty-foot lines of partrons visiting the vending machines on a ten minute break, disgustingly frustrating. To leave the machine with a purchase and have a good minute to consume said purchase, does not go very far toward assisting or boosting the morale which, I am sure you are aware, go hand-in-hand with any unit of productivity.
>
> Recently, you released a memorandum stating that Buildings 3, 4, 5, 6, and 6A, of which you are Acting Director, have shown an increase in eye injuries. If this is so, I am sure you realize that, with the increase in the working force that M.D.C. has enjoyed in the past year, you will also have an increase in all types of injuries.
>
> I am writing this letter, and am unrealistically hoping, I might add, that in your haste to disseminate said memorandums, you will take into account the morale factor and unwarranted pressures that accompany such unrealistic memorandums—memorandums which are hastily drafted and tend to discriminate by their distribution in the buildings of which you are Acting Director. They are discriminating because of the fact that they show an unfair correlation between the buildings in which you are not in the position of acquiring the Directorship.
>
> Respectfully,
>
> /s/ Chuck Rosas
> Chuck Rosas
> Dept. 404
>
> cc: ARA Services

Rosas worked the second shift on March 26, so was not scheduled to work until the afternoon. At or about 6 a.m., he stationed himself outside the fence surrounding Respondent's premises, at gate 2, and handed copies of the above letter to employees as they entered. After about 15 or 20 minutes, he asked an entering employee to give a copy to the guard at the guard's hut located on the inside of the gate. After a few minutes, Rosas noticed the guard was using the phone, so he "approached the guard's hut to see if there was some problem." The guard informed Rosas that the letter "did not have a union bug on it and it should not be passed through the gate," and that he felt it was a "nasty letter" because "it looks like you're attacking a supervisor. . . ." According to Rosas, he responded that the letter was an attempt to "get something done" that "pertains to several hundred people in this building over here." The guard did not want the letter to pass through the gate but offered to let Rosas talk to his commander. The commander was called and, after examining the letter, told Rosas he could not let it through the gate because it was "nasty." Rosas claimed that "[I]t pertains to several hundred people in there and it's some action I'm trying to take to pursue a situation. I'll hopefully remedy it." Still confronted with a refusal to let the letter through the gate, Rosas left. He returned shortly before lunchtime and asked to talk to the captain of security, who was not available. Rosas returned after the lunchbreak and was met by Richard Olson, assistant foreman in labor rela-

tions, and the security captain.[2] He testified that Olson would not permit the letter through the gate because, if he did, everybody "would want to put a letter like that out." Rosas then left.

Olson testified that, pursuant to a call from his manager, he and another company official went to gate 6, where he met Rosas and asked to see a copy of the literature that Rosas wanted to pass out. After reading the handbill, he informed Rosas that he could not pass it out in the plant, that he could proceed through the grievance procedure, but that, as the letter was "libelous," it could not be passed out. He testified Rosas did not inform him that he, Rosas, "was acting on behalf of anybody else." Olson testified Rosas told him "that he had talked to the Union and they weren't going to help him." Asked to state the reasons for not permitting Rosas to pass out the handbill, Olson testified that "an individual cannot just arbitrarily pass out any type of literature that he wants . . . he has a union to back him up"; that the handbill was "really scurrilous in that it attacks a supervisor"; and that "He must go through the Union if he wishes to file this type of complaint."

The collective-bargaining agreement in effect between Respondent and UAW from April 17, 1978, to October 12, 1980, provided in pertinent part as follows:

> *Restriction Against Pamphlets*: There shall be no distribution by employees or by the Union of notices, pamphlets, advertisements, political matter, or other literature of any kind on Company time. There shall be no posting by employees or by the Union of notices, pamphlets, advertisements, political matter, or other literature of any kind on Company property other than as provided in this Section. Additional regulations currently in effect at certain plants will be continued in supplemental agreements.

On January 30, Police Services Captain Brown issued the following memorandum regarding "UNION LITERATURE, DISTRIBUTION" to all shift commanders:

> The Company Policy on distribution of Union Literature has changed. It is now authorized for Union Literature to be distributed on Company property or at the various gates during lunch, before and after work. It is no longer necessary for them to obtain approval from Labor Relations. We in Security will still obtain a copy of the material and forward [it] to the Chief. We will not interfere with the distribution of this type of literature.

The current collective-bargaining agreement, effective from October 15, 1980, contains the following provision regarding "Distribution of Literature":

> There shall be no distribution by employees or by the Union of *Union literature during working time. Distribution of Union literature shall be permitted only so long as it does not disrupt production. Non-union literature, including but not limited to* notices, pamphlets, advertisements, political matter, or other literature of any kind *shall not be distributed on Company premises without prior authorization of the Manager-Labor Relations.* There shall be no posting by employees or by the Union of notices, pamphlets, advertisements, political matter, or other literature of any kind on Company property other than as provided in this Section. Additional regulations currently in effect at certain plants will be continued in supplemental agreements.

Conclusions

The record establishes that employees working in buildings 4 and 6 were upset with the time limitations placed upon their use of the vending machines by Schiavoni's memorandum of January 21. Having determined that the bargaining committee for Local 148 had been unable to do anything about the new restriction, Rosas, with the union stewards' approval, and after having informed other concerned employees of his intention, drafted an open letter to Schiavoni, which he sought to distribute during his nonworking time to employees located in a nonworking area, i.e., outside Respondent's gate. While the record does not show that Rosas requested permission to distribute the leaflet inside the gate, he was informed that he could not do so, nor could the leaflet be brought onto the plant premises. Respondent's reasons for not permitting Rosas to distribute the open letter were that: (1) it was a personal gripe and not a group action; (2) Rosas' actions amounted to an attempt to bypass the Union and the collective-bargaining agreements; and (3) the letter was scurrilous in nature.

Section 7 of the Act guarantees that employees shall have the right, *inter alia*, to engage in "concerted activities for the purpose of collective bargaining *or other mutual aid or protection*." (Emphasis supplied.) Section 8(a)(1) of the Act implements this guarantee by making it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees" in the exercise of their Section 7 rights.

The question presented here is whether, in passing out the open letter, Rosas was acting primarily in his own behalf, to achieve a personal objective, or on behalf of other employees, with their prior knowledge and consent, for their mutual aid and protection, and with Respondent's knowledge that he was so acting.

In evaluating the entire record, it is clear to me that Rosas was engaged in protected concerted activity when he distributed the open letter, and that Respondent's current rule governing distribution of literature at its facility is unlawfully restrictive.

With respect to Respondent's argument that Rosas was engaged in voicing an individual gripe as opposed to a group action, the record shows that Schiavoni's memorandum of January 21 imposed new time restrictions on the employees' use of the vending machines which, according to Rosas, caused them to be "upset" and "very mad." Rosas told employees that he "would try to use [sic] something in order to help the situation if I could." Rosas voiced his concern over the new restriction to

[2] Respondent admits that Olson is a supervisor within the meaning of the Act.

Union Steward Hernandez of building 4[3] and learned that the matter was a concern to the employees there, that some had been reprimanded and that a bargaining committee had taken up the matter but that nothing had been done. Rosas informed the steward that he intended to write a leaflet "hopefully to remedy the problem," and that the steward responded, "Great." Thus, it is seen that his action in drafting and disseminating the leaflet or open letter was in response to a group concern and had the sanction of the union steward, who was also an employee. Its purpose, as is clear, was to advance their common interest and concern over the new vending machine restriction and was for their mutual aid and protection. His conduct with relation to the leaflet would have been concerted and protected irrespective of whether he was overtly designated by other employees to act on their behalf, or whether he outlined to them what he was going to do. *Diagnostic Center Hospital Corp. of Texas*, 228 NLRB 1215 at 1217 (1977).

Respondent asserts it lacked knowledge of the concerted nature of Rosas' activity, and, citing numerous Board and court cases, argues that, in order for an employer to be guilty of violating Section 8(a)(1), the employer must have known of the concerted nature of the employee's activity. While there is indeed authority to support Respondent's argument, the fact that Respondent had knowledge of the concerted nature of Rosas' activity has been ignored by it. In this regard, Rosas testified without contradiction that he informed the security guard at gate 2, and later the guard commander that the leaflet or open letter "pertains to several hundred people." Moreover, the letter itself put Respondent on notice that Rosas' activity was concerted where it states, "Although the *working force* must abide by your directive, *we find* that twenty-foot lines of patrons visiting the vending machines on a ten minute break, disgustingly frustrating." (Emphasis supplied.) Accordingly, I find no merit to Respondent's argument that it lacked knowledge of the concerted nature of Rosas' activity.

Respondent argues that Rosas' conduct was, in effect, an attempt to usurp and bypass his exclusive bargaining representative, and, therefore, his conduct was not protected under Section 7 of the Act. Aside from the fact Rosas' course of action had the approval of the union steward, in *McDonnell Douglas Corporation*, 210 NLRB 280 (1974), the Board, citing *N.L.R.B.* v. *Magnavox Company of Tennessee*, 415 U.S. 322 (1974), as authority, held that the parties to a contract cannot diminish or waive employees' Section 7 rights. In *Magnavox*, the Court pointed out that the working place is "uniquely appropriate for dissemination of views concerning . . . the various options open to employees. So long as the distribution is by employees to employees and so long as the in-plant solicitation is on nonworking time, banning of that solicitation might seriously dilute Section 7 rights." The court went on to point out that the rights of solicitation of employees concerning Section 7 rights is not absolute and that considerations of production or discipline may make controls necessary. However, as in *Magnavox*, "no such evidence existed here." Hence, Rosas was not required to proceed through the grievance procedure in the collective-bargaining agreement, nor to seek redress only through the Union. Further, upon the above-mentioned authorities, it is clear (1) that Section 12(c) in the April 17, 1978, to October 12, 1980, contract, which prohibited distribution of any literature on "company time"; and (2) the present rule effective from October 15, 1980, which prohibits the distribution of "literature of any kind . . . on company premises" without prior authorization from the manager of labor relations, are both overly broad in that the former rule unlawfully restricted the right of employees to distribute literature during nonworking time, e.g., lunch, breaks, and other periods when employees were not actively at work; and the current rule unlawfully restricts the distribution of all Section 7 literature on company premises, not only on nonworking time, but also in nonwork areas. That the present rule has been applied in an unlawful manner is evident from Respondent's refusal to permit Rosas to pass out the literature both outside the gate and on company premises within the gate, including nonwork areas and during nonworking time.

Respondent argues that Rosas' open letter was either "libelous" or "scurrilous" and that its distribution was "disloyal," thereby making his activity unprotected. According to Respondent, "Rosas' letter to Schiavoni accused Schiavoni of discriminating against employees in order to gain a directorship position. No evidence was shown that Rosas had any foundation for this statement, therefore, it was malicious because it was made with reckless disregard of the truth. Therefore, Rosas' distribution of this letter was unprotected. Moreover, Rosas' attempt to distribute such a scurrilous letter concerning Schiavoni amounted to unprotected disloyalty." I am not persuaded by Respondent's argument that the allegedly intemperate language of the open letter denied to Rosas the protection of the Act. I do not find that the open letter was "libelous" or "scurrilous" or contained statements so "disloyal" as to forfeit the protection of the Act.

Respondent relies principally on *Texaco, Inc.* v. *N.L.R.B.*, 462 F.2d 812 (3d Cir. 1972), cert. denied 409 U.S. 1008 (1972) (wherein the circuit court enforced the Board's Order in 189 NLRB 343 (1971)); and *N.L.R.B.* v. *Local Union No. 1229, International Brotherhood of Electrical Workers* [*Jefferson Standard*], 346 U.S. 464 (1953), wherein the Supreme Court remanded the case to the court of appeals with instructions to dismiss the respondent's petition to modify the Order of the Board in 94 NLRB 1507. Neither case, in my view, nor the other cases cited in its brief support the Respondent's position. The Board in *Jefferson Standard* found a type of activity unprotected because it was a disparagement of the employer's product made in the context of an appeal to the general public which was entirely unrelated to the labor dispute which the union had with the employer. In the instant case, the open letter was not directed to or distributed to the general public, nor was it critical of Respondent's products or services. Rather, it expresses displeasure with the new rules regarding use of the vending machines. It is nothing more than an appeal to Schiavoni

[3] Rosas worked in building 6.

in an effort to make him aware of the employees' dissatisfaction with the new policy, and, as such, was related to Respondent's labor policy and was therefore protected by Section 7. Both the Trial Examiner, whose findings, conclusions, and recommendations were adopted by the Board in *Texaco*, and the court, in enforcing the Board's Order, distinguish *Jefferson Standard*, in that the appeal in *Texaco* was made only to employees and was made in the context of a labor dispute. Quoting the Trial Examiner, the court's opinion in *Texaco* states: "It is well settled the misstatements made in the course of concerted activity which denounce an employer for his conduct in labor relations . . . only forfeit the statutory protection when it is evident that the statements are deliberately or maliciously false." I find nothing in the open letter that could be said to be deliberately or maliciously false. The third paragraph, which Respondent apparently finds repugnant, expresses in a not too clear but sarcastic manner that Rosas hopes Schiavoni will take into consideration the employees' morale and the pressures placed upon them when he drafts memorandums affecting them, and that there should be some "correlation between the building" so that there will be no discrimination with respect to conditions between buildings in which Schiavoni is and is not the director. Respondent's apparent hypersensitivity does not convert otherwise protected activity into unprotected activity.

In sum, I find that the distribution of the open letter was protected concerted activity since it dealt with a matter of employee concern in the context of the workplace and that Respondent violated Section 8(a)(1) of the Act by refusing to allow the distribution of protected matter to employees during nonworking time and in nonworking areas of Respondent's facility. *Eastex Inc.* v. *N.L.R.B.*, 437 U.S. 556 (1978).

CONCLUSIONS OF LAW

1. Douglas Aircraft Company, Component of McDonnell Douglas Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By maintaining or enforcing a rule or contract provision which prohibits employees from distributing literature concerning matters relating to the exercise of their Section 7 rights on nonworking time in nonworking areas, Respondent has violated Section 8(a)(1) of the Act.

3. By prohibiting employees from distributing literature on nonworking time in nonworking areas concerning matters relating to the exercise of their Section 7 rights, Respondent has violated Section 8(a)(1) of the Act.

4. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[4]

The Respondent, Douglas Aircraft Company, Component of McDonnell Douglas Corporation, Long Beach, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or enforcing a rule or contract provision which prohibits employees from distributing literature concerning matters relating to the exercise of their Section 7 rights on nonworking time in nonworking areas.

(b) Prohibiting employees from distributing literature on nonworking time in nonworking areas concerning matters relating to the exercise of their Section 7 rights.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Post at its facility in Long Beach, California, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(b) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[4] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."